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असाधारण

EXTRAORDINARY

भाग II—खण्ड 2

PART II—Section 2

प्राप्तिकार से प्रकाशित

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इस भाग में पिछले पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 24th July, 1998:—

I

BILL No. 82 OF 1998

A Bill further to amend the Patents Act, 1970.

WHEREAS India is a signatory to the agreement for the establishment of the World Trade Organisation including the Agreement on Trade Related Aspects of Intellectual Property Rights for the purpose of reduction of distortions and impediments to international trade and promotion of effective and adequate protection of intellectual property rights;

AND WHEREAS with a view to meeting India's obligations under the said Agreement while safeguarding its interests, it has become necessary to amend the Patents Act, 1970 in conformity with the obligations under the Agreement that signatory countries, in formulating or amending their laws and regulations, may adopt measures consistent with the said Agreement, necessary to protect public health and nutrition and to promote public interest in sectors of vital importance to their socio-economic and technological development;

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Patents (Amendment) Act, 1998.

(2) It shall be deemed to have come into force on the 1st day of January, 1995.

Short title and
commencement.

Amendment of section 5.

2. Section 5 of the Patents Act, 1970 (hereinafter referred to as the principal Act) shall be re-numbered as sub-section (1) thereof and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

"(2) Notwithstanding anything contained in sub-section (1), a claim for patent of an invention for a substance itself intended for use, or capable of being used, as medicine or drug may be made and shall be dealt, without prejudice to the other provisions of this Act, in the manner provided in Chapter IVA.".

Insertion of new Chapter IVA.

3. After Chapter IV of the principal Act, the following Chapter shall be inserted, namely:—

CHAPTER IVA

EXCLUSIVE MARKETING RIGHTS

Application for grant of exclusive rights.

24A. (1) Notwithstanding anything contained in sub-section (1) of section 12, the Controller shall not, under that sub-section, refer an application in respect of a claim for a patent covered under sub-section (2) of section 5 to an examiner for making a report till the 31st day of December, 2004 and shall, where an application for grant of exclusive right to sell or distribute the article or substance in India has been made in the prescribed form and manner and on payment of prescribed fee, refer the application for patent, to an examiner for making a report to him as to whether the invention is not an invention within the meaning of this act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4.

(2) Where the Controller, on receipt of a report under sub-section (1) and after such other investigation as he may deem necessary, is satisfied that the invention is not an invention within the meaning of this Act in terms of section 3 or the invention is an invention for which no patent can be granted in terms of section 4, he shall reject the application for exclusive right to sell or distribute the article or substance.

(3) In a case where an application for exclusive right to sell or distribute an article or a substance is not rejected by the Controller on receipt of a report under sub-section (1) and after such other investigation, if any, made by him, he may proceed to grant exclusive right to sell or distribute the article or substance in the manner provided in section 24 B.

Grant of exclusive rights.

24B. (1) Where a claim for patent covered under sub-section (2) of section 5 has been made and the applicant has,—

(a) where an invention has been made whether in India or in a country other than India and before filing such a claim, filed an application for the same invention claiming identical article or substance in a convention country on or after the 1st day of January, 1995 and the patent and the approval to sell or distribute the article or substance on the basis of appropriate tests conducted on or after the 1st day of January, 1995, in that country has been granted on or after the date of making a claim for patent covered under sub-section (2) of section 5; or

(b) where an invention has been made in India and before filing such a claim, made a claim for patent on or after the 1st day of January, 1995 for method or process of manufacture for that invention relating to identical article or substance and has been granted in India the patent therefor on or after the date of making a claim for patent covered under sub-section (2) of section 5,

and has received the approval to sell or distribute the article or substance from the authority specified in this behalf by the Central Government, then, he shall have the exclusive right by himself, his agents or licensees to sell or distribute in India the article or the substance on and from the date of approval granted by the Controller in

this behalf till a period of five years or till the date of grant of patent or the date of rejection of application for the grant of patent, whichever is earlier.

(2) Where, the specifications of an invention relatable to an article or a substance covered under sub-section (2) of section 5 have been recorded in a document or the invention has been tried or used, or, the article or the substance has been sold, by a person, before a claim for a patent of that invention is made in India or in a convention country, then, the sale or distribution of the article or substance by such person, after the claim referred to above is made, shall not be deemed to be an infringement of exclusive right to sell or distribute under sub-section (1):

Provided that nothing in this sub-section shall apply in a case where a person makes or uses an article or a substance with a view to selling or distributing the same, the details of invention relatable thereto were given by a person who was holding an exclusive right to sell or distribute the article or substance.

24C. The provisions in relation to compulsory licences in Chapter XVI shall, subject to the necessary modifications, apply in relation to an exclusive right to sell or distribute under section 24B as they apply to, and in relation to, a right under a patent to sell or distribute and for that purpose the following modifications shall be deemed to have been made to the provisions of that Chapter and all their grammatical variations and cognate expressions shall be construed accordingly, namely:—

Compulsory
licences.

(a) throughout Chapter XVI,—

(i) working of the invention shall be deemed to be selling or distributing of the article or substance;

(ii) references to "patents" shall be deemed to be references to "right to sell or distribute";

(iii) references to "patented article" shall be deemed to be references to "an article for which exclusive right to sell or distribute has been granted";

(b) three years from the date of sealing of a patent in section 84 shall be deemed to be two years from the date of approval by the Controller for exclusive right to sell or distribute under section 24B;

(c) the time which has elapsed since the sealing of a patent under section 85 shall be deemed to be the time which has elapsed since the approval by the Controller for exclusive right to sell or distribute under section 24B;

(d) clauses (d) and (e) of section 90 shall be omitted.

24D. (1) Without prejudice to the provisions of any other law for the time being in force where, at any time after an exclusive right to sell or distribute any article or substance has been granted under sub-section (1) of section 24B, the Central Government is satisfied that it is necessary or expedient in public interest to sell or distribute the article or substance by a person other than person to whom exclusive right has been granted under sub-section (1) of section 24B, it may, by itself or through any person authorised in writing by it in this behalf, sell or distribute the article or substance.

Special provision
for selling or
distribution.

(2) The Central Government may, by notification in the Official Gazette and at any time after an exclusive right to sell or distribute an article or a substance has been granted, direct, in the public interest and for reasons to be stated, that the said article or substance shall be sold at a price determined by an authority specified by it in this behalf.

24E. All suits relating to infringement of a right under section 24B shall be dealt with in the same manner as if they are suits concerning infringement of patents under Chapter XVIII.

Suits relating to
infringements.

Omission of
section 39.

4. Section 39 of the principal Act shall be omitted.

Amendment of
section 40.

5. In section 40 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

Amendment of
section 64.

6. In section 64 of the principal Act, in sub-section (1), in clause (n), the words and figures "or made or caused to be made an application for the grant of a patent outside India in contravention of section 39" shall be omitted.

Amendment of
section 118.

7. In section 118 of the principal Act, the words and figures "or makes or causes to be made an application for the grant of a patent in contravention of section 39" shall be omitted.

STATEMENT OF OBJECTS AND REASONS

India has signed the agreement for the establishment of the World Trade Organisation (WTO) including the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs). The WTO Agreement has come into force on 1st January, 1995. With a view to meeting India's obligations under the TRIPs Agreement, it has become necessary to amend the Patents Act, 1970.

2. One of the obligations of the Member countries is to provide, with effect from 1st January 1995, means for filing of applications for patents in the areas of pharmaceuticals and agricultural chemicals and on fulfilling certain conditions by such applicants, granting of Exclusive Marketing Rights (EMR) till the expiry of a period of five years or until the patent is granted or rejected, whichever is earlier. In India, the Patents Act, 1970 does not provide for grant of product patents in the field of agricultural chemicals and pharmaceuticals.

3. Government of India set up an Expert Group for making suggestions for safeguarding our interests while fulfilling our obligations and for making specific suggestions for amendments to the Patents Act, 1970. Government has considered the suggestions made by the Expert Group and while formulating measures to meet the obligations have provided for the following safeguards in public interests:—

(i) examination of applications to ensure that provisions of sections 3 and 4 of the Patents Act, 1970 are not violated;

(ii) for inventions made in India, the applicant does not have to obtain a product patent and marketing approval in some other country but has the option of obtaining a process patent for an identical invention in India;

(iii) deletion of section 39 of the Patents Act, 1970 which places restrictions on filing of applications for patents outside India;

(iv) Government intervention in case the EMR is used against public interest or in any other circumstance of extreme emergency; and

(v) expansion of compulsory licensing provisions in the case of KMR also.

4. The Bill seeks to achieve above objective.

NEW DELHI;
June 11, 1998.

CHANDRASHEKHAR SAHU

FINANCIAL MEMORANDUM

The Bill seeks to add a sub-section, namely, sub-section (2) in the existing section 5, insertion of a new Chapter, namely, Chapter IVA, deletion of section 39, amendments in sections 40, 64 and 118 of the Patents Act, 1970. The insertion of a new sub-section in section 5 and insertion of a new Chapter in the Patents Act, 1970 is expected to result in receipt of applications for product patents in agricultural chemical and pharmaceuticals and for grant of exclusive marketing rights and it may become necessary to strengthen the office of the Controller General of Patents, Designs and Trade Marks in terms of additional manpower and modern office equipments, etc., to handle the increased work-load, which may involve recurring and non-recurring expenditure from the Consolidated Fund of India. However, it is not possible, at this stage, to readily estimate this amount of expenditure which may have to be incurred from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (1) of section 24A proposed to be inserted by clause 3 of the Bill empowers the Central Government to prescribe the form and manner of making applications and payment of fees in connection with applications for exclusive marketing rights. These matters relate to *matters of procedure and administrative details* and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

II

BILL No. 83 OF 1998

A Bill further to amend the Constitution (Scheduled Tribes) Order, 1950.

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Scheduled Tribes) Order (Amendment) Act, 1998.

Amendment of
the Schedule.

2. In the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in Part IX.—
Maharashtra.

(a) in entry 18,—

(i) for the words “Gond Gowari”, the word “Gowari” shall be substituted;
and

(ii) the word “Mana”, shall be omitted.

(b) in entry 19, after the word “Halba”, the word “Halba Kosti” shall be inserted.

(c) after entry 33, the following entry shall be inserted, namely:—

“33A. Mana.”.

STATEMENT OF OBJECTS AND REASONS

Some entries in the list of Scheduled Castes and Scheduled Tribes notified in various Presidential Orders have been the subject of criticism on the ground that the names of certain Scheduled Caste and Scheduled Tribe communities or sub-sections there of included in the list sound derogatory or unjustifiable because of their unrespectful or undignified connotation and as such these entries are being amended from time to time.

Gond, Gowari, Mana, Halba Kosti (sub-tribes of Halba) are separate communities and should have been shown separately in the Schedule to the Constitution (Scheduled Tribes) Order, 1950, in Part IX — in respect of Maharashtra State.

Upto 1980 these tribes were accorded tribal status and were provided with all facilities available to other Scheduled Tribes. The Government of Maharashtra withdrew all the facilities to these tribals. The people of these tribes have been agitating for restoration of their tribal status and facilities to them. The Bill seeks to restore the tribal status to the "Gowari", "Halba Kosti" and "Mana" tribes.

Hence this Bill.

NEW DELHI;

VILAS MUTTEMWAR

June 13, 1998.

III

BILL NO. 84 OF 1998**A Bill further to amend the Prevention of Cruelty to Animals Act, 1960.**

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title,
application and
commencement.

1. (1) This Act may be called the Prevention of Cruelty to Animals (Amendment) Act, 1998.

(2) It shall apply to the State of Goa.

(3) It shall come into force at once.

Amendment of
section 11.

2. In section 11 of the Prevention of Cruelty to Animals Act, 1960, in sub-section (3), after clause (e), the following clause shall be added, namely:—

“(f) “Dhirio” as organised in the prescribed manner”.

Explanation.—“Dhirio” means a traditional game for trial of strength between bulls, as organised in the State of Goa.”.

STATEMENT OF OBJECTS AND REASONS

"Dhirio" (Bull fights) is a traditional, popular and unique sport prevalent in the State of Goa wherein the bulls are trained properly by the bull owners to fight each other and to develop their strength and stamina. "Dhirio" is a sports event held for fun and entertainment and the winning bull is awarded a cash prize by the sponsors and this helps the owner in maintaining the bull.

In "Dhirio", usually no injuries occur to the participating bulls, however, occasionally, there may be minor injuries which are treated immediately. Also, no cruelty is involved in this sport.

Moreover, the game is a source of livelihood for a large section of the population who specially maintain and nourish the bulls for the purpose of "Dhirio".

Hence, with a view to protect the interests of the people involved in this popular sport and which is also a source of livelihood for them, it is necessary to amend the Prevention of Cruelty to Animals Act, 1960, in its application to the State of Goa.

This Bill seeks to achieve the above objective.

NEW DELHI;
June 22, 1998.

RAVI S. NAIK

IV

BILL No. 81 OF 1998**A Bill further to amend the Patents Act, 1970.**

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title and commencement.

1. (1) This Act may be called the Patents (Amendment) Act, 1998.
(2) It shall come into force at once.

Amendment of section 53.

2. In section 53 of the Patents Act, 1970, in sub-section (1),—
 - (i) In clause (a), the words “or as a medicine or drug” shall be omitted;
 - (ii) after clause (a), the following clause shall be added, namely:—

“(aa) in respect of an invention claiming the method or process of manufacture of a substance, where the substance is intended for use, or is capable of being used, as a medicine or drug, be eighteen years from the date of sealing of the patent, or twenty years from the date of the patent, whichever period is shorter;”.

STATEMENT OF OBJECTS AND REASONS

Patents Act was enacted in the year 1970. Since then no major amendments have been made in the Act. At present, the term of patent for a medicine or drug is just five years. The period of patent should be increased considerably to atleast twenty years for the following reasons:—

- (a) to ensure manufacture of quality drugs to meet competition from international companies;
- (b) to encourage invention of new process of a drug or a medicine;
- (c) to stabilise the prices of medicines.

Therefore, it is essential to amend the Patents Act, 1970 suitably to increase the term of patent for a drug or medicine.

Hence this Bill.

NEW DELHI;
June 26, 1998.

V. SAROJA

V

BILL NO. 85 OF 1998

A Bill to regulate medical profession with a view to provide best available health care to the citizens of the country.

Be it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title,
extent and
commencement.

1. (1) This Act may be called the Medical Profession (Regulation) Act, 1998.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(i) "Council" means the Indian Health Care Council established under section 3;

(ii) "Arbitrator" means Arbitrator appointed under section 6;

(iii) "appropriate Government" means the Central Government or a State Government, as the case may be;

(iv) "medical practitioner" means a practitioner who is eligible to practise in any system of Indian medicine or Allopathy or any other system of medicine for the time being recognised as a system of medicine; and

(v) "prescribed" means prescribed by rules made under this act.

3. (1) The Central Government shall establish a Council to be known as Indian Health Care Council consisting of a Chairman and four other members.

Establishment of Indian Health Care Council.

(2) The Chairman and the other members shall possess knowledge and experience of atleast a period of ten years in Allopathy or any system of Indian medicine.

(3) The Chairman and the other members shall be appointed for a term of five years from the date of appointment or until they attain sixty two years of age, whichever is earlier.

(4) The Chairman and the other members shall be entitled to such salaries and allowances as may be prescribed.

4. The Council shall set up a Branch in every State and Union Territory.

Branches of Council.

5. For the purposes of this Act, the Council shall set up an Arbitration Authority in every district:

Arbitration Authority.

Provided that more than one Arbitration Authority may be set up in any district in accordance with the need and requirements.

6. (1) Every Arbitration Authority set up under section 5 shall consist of an Arbitrator and two other members.

Appointment of Arbitrator

(2) The Arbitrator so appointed shall possess adequate knowledge in medicine and should have practised medicine atleast for a period of five years and the members shall be appointed from persons having experience in the fields of social service or consumer affairs.

7. Every medical practitioner shall register himself with the Council as soon as he has become entitled to practise.

Registration of Medical Practitioners.

8. No person who has not registered himself with the Council shall be qualified to practise medicine in any part of the territory of India.

Compulsory Registration.

9. (1) Any person who has been affected by an action of a medical practitioner in the course of his duties and functions as such, and has suffered a mental or physical injury capable of being quantified or has suffered any disability, whether permanent or temporary in nature, out of the negligence or inaction of the medical practitioner, may make a complaint to the concerned Arbitration Authority.

Complaint against Medical Practitioner.

(2) Any complaint under sub-section (1) shall be in writing and addressed to the concerned Arbitrator and shall be given within a period of one month from the date of occurrence of negligence or inaction on the part of the medical practitioner.

10. The Arbitration Authority, on receipt of a complaint under section 9, shall make such inquiry as may be deemed necessary for the purpose of redressal of the complaint:

Power to conduct inquiry.

Provided that while making inquiry, the Arbitration Authority may require the attendance of the medical practitioner and other persons involved in the suit or any other person, who in the opinion of the Arbitration Authority, can tender evidence or submit documents in connection with the suit or tender expert advice.

11. While discharging its functions, the Arbitration Authority shall have all the powers of a civil court as provided under the Code of Civil Procedure, 1908 with respect to issue of summons, taking of evidence and examination of witnesses.

Powers of Arbitration Authority.

Disposal of Complaints.

12. The Arbitration Authority shall dispose of a complaint as soon as possible, but in any case not later than two months from the date of receipt of the complaint.

Compensation.

13. The Arbitration Authority, while disposing of a complaint, may award compensation for the injury suffered or treatment free of cost as may be required for the complete recovery of the affected person or recommend to the Council for the cancellation of the registration of the medical practitioner for a specified period or permanently.

Admission of evidences and to seek opinion of experts.

14. The Arbitration Authority, while discharging its functions under the provisions of this Act may take into account the circumstances and merits of each case and evidence and documents tendered, if any, and shall have the power to seek opinion of any medical practitioner, who is specialised in any field of medicine or any other person.

Award shall be binding.

15. The award passed by the Arbitration Authority shall be binding on all the parties to the complaint.

Punishment for frivolous complaints.

16. If any person has made a complaint of a frivolous nature or if the complaint is of such a nature that it should not have been brought to the notice of the Arbitration Authority or if the complaint has no cause of action or if the Arbitration Authority feels that the person has made the complaint deliberately or intentionally with a view to denigrating the image of the medical practitioner and with a view to hurt his practice, the Arbitration Authority may punish the person who has made such a complaint with imprisonment for a period of one year and a fine of rupees ten thousand:

Provided that where the person who has made the complaint proves that he has made the complaint in the good faith and with a good intention on the basis of information available with him and to the best of his knowledge, the Arbitration Authority shall not pass any sentence against the person who has made the complaint.

Functions of Council.

17. The Indian Health Care Council shall perform the following functions:—

(i) advise the Central Government in the formulation of a health plan covering all sections of the society, from time to time, with a view to making available best health care to the citizens of the country;

(ii) recommend to the Government in the matter of qualifications and experience required for a medical practitioner before he is entitled to practise in any system of medicine;

(iii) may, on a request from State Government, advise the State Government about the health care and restructuring of hospitals and dispensaries with a view to making available cheap and good health care to the citizens; and

(iv) recommend to the Central Government on any matter pertaining to medical profession or health care.

Jurisdiction.

18. (1) On and from the date of commencement of this Act, no suit shall be filed against a medical practitioner for his negligence or inaction in the course of his duties as such in any court:

Provided that nothing in this section shall apply to the suits already pending in a court of law.

(2) On and from the date of commencement of this Act, any complaint against the medical practitioner shall be filed only before the Arbitration Authority.

Appeal against Arbitration Authority.

19. An appeal against the decision of the Arbitration Authority shall lie in a High Court.

Overriding effect of the Act.

20. The provisions of this Act shall have effect notwithstanding anything contained in the Consumer Protection Act, 1986 or any other law for the time being in force pertaining to medical profession.

Power to make rules.

21. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

STATEMENT OF OBJECTS AND REASONS

Medical profession is one of the important professions providing health care to the citizens. Persons suffering from any illness or disease look upon doctors as Gods. Of late, it has been observed that with the advent of consumer movement in the country, people make complaints against medical practitioners even on petty grounds appealing for huge amounts as compensation. Though, the medical practitioners who are guilty or who have been negligent or inactive should be punished severely yet, the attitude of making complaints should not become a common trend.

In the recent past many cases have been filed in consumer courts for redressal of grievances against medical practitioners. Though, it is the duty of the Government to ensure best health care to the citizens of the country and to ensure that medical practitioners follow professionalism and ethics in their profession, yet it is the duty of the Government also to see that the medical practitioners are not harassed unnecessarily on petty grounds. Though, it is understandable that the consumer movement has gained momentum in the country and cases are disposed of quickly as never before, yet cases relating to medical profession should not be filed in consumer courts because the Judges of the consumer courts, it is often found, do not possess even basic knowledge in medicine or do not understand the problems faced by medical practitioners in their profession.

Therefore, it is essential to set up a machinery for the redressal of grievances against medical practitioners possessing adequate knowledge and experience in medicine so that the merits and circumstances of each case can be gone into detail and a fair and just judgement can be given. It is also proposed to make provision for punishment to persons making frivolous complaints in order to reduce the piling up of cases against medical practitioners.

The Bill seeks to regulate the medical profession in such a way so as to enable the medical practitioners to cater to the needs of the public at large in the best way.

Hence this Bill.

NEW DELHI:
June 24, 1998.

V. SAROJA

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for setting up of the Indian Health Care Council consisting of a Chairman and four other members. They are entitled to such salaries and allowances as may be prescribed. Clause 4 enables the Council to set up a branch in every State and Union Territory. Clause 5 provides for the constitution of Arbitrary Authorities in every district for hearing the cases filed against medical professionals. Clause 13 provides for award of compensation. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. A recurring expenditure of about rupees ten crore is likely to be involved from the Consolidated Fund of India. A non-recurring expenditure of about rupees twenty five thousand is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 21 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. Since the rules will regulate the matters of detail only, the delegation of legislative power is of a normal character.

VI

BILL NO. 80 OF 1998**A Bill further to amend the Constitution of India.**

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 1998.

Insertion of new article 16A.

2. After article 16 of the Constitution, the following article shall be inserted, namely:—

Reservation for women in services.

"16A. Notwithstanding anything in this Constitution, thirty-three per cent. of appointments or posts in services under the State shall be reserved for women.".

STATEMENT OF OBJECTS AND REASONS

Despite great efforts made to ameliorate the sufferings of women, they continue to remain socially and economically weak. They, therefore, deserve special consideration and facilities for improving the quality of their life. The percentage of women in employment is very low. There is job reservation for Scheduled Castes and Scheduled Tribes and Backward Classes in order to make up leeway. But no such reservation exists for women, who constitute a large segment of socially and educationally backward population. They are denied social justice.

In order that women may enjoy the fruits of social justice, the job reservation facilities should be extended to women as in the case of other weaker sections of the society.

There is also a move to reserve thirty-three per cent of seats in Lok Sabha and State Assemblies in favour of women. It is but appropriate that reservation should be extended to services also.

Hence this Bill.

NEW DELHI,
June 24, 1998.

V. SAROJA

VII

BILL NO. 77 OF 1998**A Bill further to amend the Constitution of India.**

BE it enacted by Parliament in the Forty-ninth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Constitution (Amendment) Act, 1998.

**Insertion of
new article
75A.**

**2. After article 75 of the Constitution, the following article shall be inserted,
namely:—**

**Provisions as to
confidence in
the Council of
Ministers.**

“75A. Notwithstanding anything contained in articles 74 and 75—

(1) The House of the People shall express its lack of confidence in the Prime Minister and his Council of Ministers only by electing his successor through a composite motion supported by a majority of the total members of the House and presenting an address to that effect to the President, who shall then appoint the person so elected as the new Prime Minister.

(2) In the event of failure of the Council of Ministers to secure, or retain the confidence of the House of the People, and if the House is not able to elect a person to be appointed as the new Prime Minister in accordance with the provisions laid down in clause (1), the President shall, upon the advice of the Council of Ministers, dissolve the House of the People within ten days, unless the House elects another person to be appointed as Prime Minister within this period”.

3. In article 85 of the Constitution, in clause (2), the following proviso shall be added at the end, namely:—

Amendment of article 85.

"Provided that the power under sub-clause (b) of clause (2) shall be exercised subject to the provision of article 75A".

4. After article 164 of the Constitution, the following article shall be inserted, namely:—

Insertion of new article 164A.

"16A. Notwithstanding anything contained in articles 163 and 164—

(1) The Legislative Assembly shall express its lack of confidence in the Chief Minister and his Council of Ministers only by electing his successor through a composite motion supported by a majority of the total members of the Assembly and presenting an address to that effect to the Governor, who shall then appoint the person so elected as the new Chief Minister.

Provisions as to confidence in the Council of Ministers.

(2) In the event of failure of the Council of Ministers to secure, or retain the confidence of the Legislative Assembly, and if the Assembly is not able to elect a person to be appointed as the new Chief Minister in accordance with the provisions laid down in clause (1), the Governor shall, upon the advice of the Council of Ministers, dissolve the Legislative Assembly within ten days, unless the Assembly elects another person to be appointed as Chief Minister within this period."

5. In article 174 of the Constitution, in clause (2), the following proviso shall be added at the end, namely:—

Amendment of article 174.

"Provided that the power under sub-clause (b) of clause (2) shall be exercised subject to the provisions of article 164A".

STATEMENT OF OBJECTS AND REASONS

The Indian political system has come under increasing stress due to fractured polity and multiplicity of political parties. During the last four General Elections since 1989, no political party could secure majority in the House of the People. This period was marked by a succession of seven coalition or minority governments resulting in frequent elections. This had a destabilising effect on the national psyche and our socio-economic system. A question mark has also arisen on the credibility of the present constitutional framework.

2. The Government has already decided to constitute a panel to review the Constitution to cope with emerging trends in Indian polity. A new dispensation is needed to impart stability to our polity.

3. Even within the existing constitutional framework, a provision is needed to assign a direct and effective role to the House of the People and the Legislative Assemblies for electing an alternative Government when the Council of Ministers fails to secure, or retain the confidence of the House/Assembly. Such a provision will accord priority and activate the role of the House of the People and the Legislative Assembly, and eliminate the vice of backroom political manoeuvres. Moreover, in that case, the dissolution of the House/Assembly shall become the last resort, and occur only when there is an insuperable Constitutional impasse.

4. This Bill seeks to achieve the above objectives by insertion of two new articles 75A and 164A in the Constitution.

NEW DELHI;
June 9, 1998.

MADHUKAR SIRPOTDAR

S.GOPALAN,
Secretary-General.